

MINUTES OF THE STARK COUNTY LAND REUTILIZATION CORPORATION
November 18, 2019

The Stark County Land Reutilization Corporation met for their regular meeting on Monday, November 18, 2019 at 9:00 a.m. in the Stark County Regional Planning Commission Conference Room.

Board Members

Alex Zumbar
Lem Green
Janet Creighton
John Arnold
Bill Smith

1. CALL TO ORDER BY SCLRC CHAIRMAN, Alex Zumbar

2. ROLL CALL – Board Members Present

Roll call found the following Board members in attendance: Alex Zumbar, Janet Creighton, Lem Green, John Arnold and Bill Smith.

3. APPROVAL OF MINUTES OF OCTOBER 21, 2019 MEETING

Zumbar moved, Arnold seconded, and the motion carried to approve the minutes of October 21, 2019 meeting.

4. PUBLIC SPEAKS – No public speaks

5. TREASURER/FISCAL REPORT

a. Treasurer Report

Cunningham reviewed the Treasurer's Report for the month of October. Creighton moved, Arnold seconded, and the motion carried to approve the Treasurer's report for October.

b. 2020 Budget Proposal

Cunningham reviewed the draft 2020 budget. Creighton asked if the Ohio Land Bank Association membership dues of \$5,000 was based upon population and is there a possibility that cost would increase. Thorley stated that fee is based upon the DTAC allotment. It was stated at a board meeting he attended last week that the fee will not increase for this coming year. Additional questions were taken on the budget details. Zumbar stated that any action on the budget will be deferred until next month's meeting.

6. NEIGHBORHOOD INITIATIVE PROGRAM (NIP) REPORT – Sarah Peters

Peters presented the Neighborhood Initiative Program (NIP) Update

City of Canton:**❖ 576– Total number of acquired properties to date:**

- 576 demolitions reimbursement packets have been completed overall
 - 534 demolitions have been approved by OHFA – 13 new packets since the October report.
 - Current average cost of demolition per property is \$16,963.00
 - OHA mortgages are fully executed on 521 properties & OHFA reimbursement to SCLRC - \$8,706,893.83
 - Canton has been reimbursed a total of \$8,668,627.00 for 559 properties
 - OHA mortgages are pending on 13 properties & OHFA expected to reimburse SCLRC - \$236,463.66
 - 25 additional demolitions waiting on OHFA approval – reimbursement expected up to \$456,718.59
 - 17 demolition packets being readied by the RPC for submission to OHFA; - total of \$370,499.91; OHFA to reimburse SCLRC up to this total cost.

City of Alliance:**❖ 161 - Total number of acquired properties to date:**

- 161 demolition reimbursement packets have been submitted overall
 - 161 demolitions have been approved by OHFA
 - Average cost of demolition per property is \$14,493.00
 - OHA mortgages are fully executed on 161 properties & OHFA reimbursement to SCLRC - \$2,333,421.38
 - Alliance has been reimbursed a total of \$2,123,195.46 for 161 properties

City of Massillon:**❖ 60 - Total number of acquired properties to date**

- 60 demolitions reimbursement packets have been submitted overall
 - 40 demolitions have been approved by OHFA – 0 new packets since October report.
 - Current average cost of demolition per property is \$13,717.00
 - OHA mortgages are fully executed on 40 properties & OHFA reimbursement to SCLRC - \$522,682.97
 - Massillon has been reimbursed a total of \$586,287.90 for 40 properties

- 8 additional demolitions waiting on OHFA approval – reimbursement expected up to \$108,004.93
- 12 demolition packets being readied by the RPC for submission to OHFA – total of \$192,325.79; OHFA to reimburse the SCLRC up to this total cost.

➤ Available NIP Funding	\$12,165,180.40
➤ NIP Funding Reimbursed	\$11,562,998.19
➤ Pending NIP Reimbursements	\$ 236,463.66
➤ Available Balance	\$ 365,718.55

➤ Demolitions awaiting OHFA Approval	\$ 564,723.52
➤ Pending Submittals	\$ 562,825.70
	\$ 1,127,549.22

➤ NIP demolitions exceeding “Available NIP Balance”	\$ 761,830.67
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❖ **On November 12, 2019, OHFA approved a “NIP – Supplemental Agreement” with the SCLRC providing a guarantee of up to \$12,500.00 for each demolition exceeding the “Available NIP Balance”. Currently, it appears that the SCLRC will receive an additional \$520,000.00+ in “new” NIP funding, reducing the non-reimbursed demolition balance to approximately \$242,000.00. This amount is expected to be split between the SCLRC and Canton/Massillon.**

Peters stated that staff have been actively talking with OHFA regarding additional funds being available from non-allocated funds. SCLRC was approved on Nov. 12th for a supplemental agreement which reserves up to \$12,500 for each property that SCLRC has left to submit which exceeds the remaining available NIP balance. It appears the Land Bank will receive about \$520,000.00 +/- for those properties, which reduces the amount not reimbursed down to about \$242,000, and that amount will be split between the Land Bank and the communities involved. OHFA has stated that as quickly as the packets are turned in, if the money is available, the Land Bank might get the 100% reimbursement, but there is no guarantee. Green moved, Arnold seconded, and the motion carried to approve the NIP report as submitted.

Green moved, Creighton seconded, and the motion carried to approve accepting the supplemental agreement entered into November 12, 2019 for additional funding from OHFA.

7. SIDE LOT/VACANT LOT PROGRAM REPORT

Sarah Peters presented the Side Lot Program Update:

Total Applications Submitted: 1,860

(8 applications were received since Oct. '19 update)

Cities – 1,582 - Breakdown: Canton: 1,256, Massillon: 121, Alliance: 205
Other Communities – 278

Bethlehem Twp – 19, Brewster – 3, Canal Fulton – 1, Canton Twp – 58, East Canton – 7, East Sparta – 2, Hartville – 3, Jackson Twp – 4, Lake Twp – 5, Lawrence Twp – 9, Lexington Twp – 38,

Limaville – 2, Louisville – 2, Marlboro – 1, Meyer’s Lake – 1, Minerva – 3, Nimishillen – 5, North Canton – 1, Osnaburg Twp – 15, Paris Twp – 3, Perry Twp – 11, Pike Twp – 18, Plain Twp – 34, Sandy Twp – 15, Sugarcreek Twp – 6, Tuscarawas Twp – 2, Washington Twp – 5, and Waynesburg – 4, Wilmot -1

- Total Number of Applications under Preliminary Review: 18
- Total Number of Applications Denied: 629
- Number of Canceled Applications/Fee Refunded: 67
- Total Number Pending Approval by Community: 37
- **Total Number of Approved Applications: 1,109**
(16 Applications approved since Oct. '19 update)

- Total Number of Approved Applications Pending Deposit Receipt / NIP Early Lien Release Approval / Request for Foreclosure / Completed Foreclosure Proceeding: 224
- Total Number Being Prepared for Transfer: 62
- **Total Number Transferred to Date: 823**

Vacant Lot Program Update:

Total Applications Submitted: 200
(2 Applications received since Oct. '19 update)

Cities – 171: Canton: 157, Alliance: 11, Massillon: 3

Other Communities – 29
Bethlehem Twp - 8, Canton Twp – 5, Hartville – 1, Lexington Twp – 2, Sugarcreek Twp – 1, Washington Twp – 4, Jackson Twp – 2, Sandy – 5, Perry Twp - 1

- Total Number of Applications under Preliminary Review: 2
- Total Number of Applications Denied: 148
- Number of Canceled Applications/Fee Refunded: 5
- Total Number Pending Approval by Community: 4
- **Total Number of Approved Applications: 41**
(1 Application approved since Oct. '19 report)

- Total Number of Approved Applications Pending Executed MOU/ Completion of Foreclosure Proceeding: 6
- Total Number Being Prepared for Transfer: 13
- Total Number Transferred to Date: 22

Smith moved, Green seconded, and the motion carried to approve the Side Lot/Vacant Lot report as submitted.

8. NEW BUSINESS

- a. Targeted Acquisition Assistance Program Request:
- City of Alliance – 1495 Freshly Ave. - Parcel #10010741

Green moved, Creighton seconded, and the motion carried to approve the acquisition request from the City of Alliance.

9. OLD BUSINESS

- a. Stark County Treasurer – Agreement to provide services

Thorley reviewed the details of the Treasurer's agreement. Green moved, Smith seconded, and the motion carried to approve the Treasurer's agreement with the Land Bank. Zumbar abstained.

- b. Stark County Prosecutor – Agreement to provide services

Thorley stated the agreement between the Land Bank and the Prosecutor's office remains a draft copy as there are still issues that need further discussion. Steve Babik and he have had a number of conversations over the past couple of months as it relates to this agreement, and it has come to a \$750.00 fee per case for work that will be accomplished by the Prosecutor for the acquisition of properties.

Babik pointed out that initially the agreement that the Prosecutor's office presently has with the SCLRC renders them as legal counsel to provide general legal services to the Land Bank; and that's a quote. Babik interpreted that to mean that the Prosecutor's office is presently counsel for the Land Bank, and they have a fiduciary duty to the Land Bank. That means the Prosecutor's office has to take steps and make decisions that are in the Board's best interest. He felt it important to apprise the Board of the status of the negotiations, and how they got to this point.

Babik stated that on October 16, 2019, the Prosecutor's office proposed an identical contract to that which has just been approved by this Board for the Treasurer's office. It was also in substantially the same form as the existing agreement. One difference in that agreement versus the prior contract is the number they were asking for had been reduced by about 30%. The Prosecutor's office understood that when the NIP grant had ended, that funding was no longer going to be available, but there would still be work that their office does on behalf of the Land Bank for side lot and other things. They took steps to reduce staff by letting one person go, an administrative assistant, to show that they were taking steps to be fiscally responsible with the money. So the proposed contract was exactly the same as the Treasurer's agreement that was just approved, and it had a 30% reduction as a result of the NIP grant being eliminated. He was told shortly thereafter, that such an agreement would not be considered by this Board. That it was not even open for discussion, and this would be a consistent theme throughout the conversations. Babik thought it was important that the Board knows what has been told to him; that it's not open for discussion. The Board can ultimately either accept an agreement or reject an agreement from their office. That's this Board's discretion.

Babik stated that on October 22nd, he sent an email to clarify the scope of their representation. He informed Dave Thorley and Bob Nau, and copied Alex Zumbar and Jerry Yost, that the existing

agreement says the Prosecutor's office is to provide general legal services to the Land Bank. He also pointed out that the Prosecutor's office is fully capable of providing any services the Land Bank needs. Because the Treasurer's office does additional services, Babik believed there was no reason the Prosecutor's office can't do those additional services as well, which would bring uniformity to the two relationships. On October 25, 2019, Babik stated that he was told by Thorley that the bottom line was \$550.00 on a per case basis. That was not going to be open for negotiation. According to the draft that was in front of the Board, that number has changed. In a previous discussion, Babik asked Thorley if it was his position or the Board's position. He was told that the Board quote, "knows nothing". He said quote, "he's not at liberty to tell me why we're not allowed to discuss any additional services". Further he was told that if I did not accept it, the Land Bank would quote, "intentionally keep the number of cases down so our office can expect even less money". This makes it very difficult for the Prosecutor's office to agree to any contract that is going to get paid on a per case basis. If the number of cases the Prosecutor gets is controlled by RPC, there could be as little as zero if they chose. Indeed that is what he was told. Babik asked that their services be expanded, and he believed they can provide a very valuable service to the Land Bank. It has been met with refusals to negotiate. Babik stated that there have been numerous terms that they were told were not open for discussion. Babik stated that there have been other matters that he has been informed of that he hesitated to disclose to the Board because he did have good relationships with Nau and Thorley, but he was happy to answer any questions that the Board has, and he would welcome any guidance that the Board can provide with regard on how they should proceed.

Zumbar stated the Prosecutor's contract that is before this Board is only for one year. Babik responded that they have been told that they are not allowed to have a two-year contract.

Thorley stated that his recollection of the conversations that he and Babik had is not necessarily the same as what Babik is saying. When Babik says that certain things were not open for discussion, he's right in some respect. What Babik is trying to do is equate what the Prosecutor's office does in the general day-to-day operations to what the Treasurer does. What Babik was looking at from a budgetary perspective was how the Prosecutor's office can budget a number when they don't necessarily know what that number is going to be if they are paid on a per case basis. What Babik was looking at doing was exactly what happened during NIP, and that was billing on a quarterly basis. What RPC is recommending is a time and materials contract, wherein RPC will give cases to the Prosecutor and they would get paid on a per case basis. Thorley disagreed with Babik's statement that it's not open for discussion, because they have had five, six, seven different discussions. The \$550 number came about from a while ago where another assistant prosecutor and he worked out for purposes of NIP what the reimbursement would be, which was approved by OHFA, and that was \$500 a case. RPC staff has done significant research in calling around to other Land Banks statewide and finding out exactly what their relationship is with their Prosecutor. They have found one Land Bank that pays their Prosecutor to actually do property acquisitions, and that is Mahoning County at \$550. When looking at what the Prosecutor has accomplished for the Land Bank during NIP, and the cases that were handled, that comes out to \$621 per case. So Thorley believed the \$750 a case was a reasonable compromise as to what they should pay. But the bottom line is that the Land Bank's use of the Prosecutor's office even through NIP was almost exclusively the acquisition of properties and should be the same going forward.

Creighton stated that she heard Babik say that there are other issues, but he doesn't want to bring them forward right now. Babik stated that is correct. Creighton believed there needs to be a discussion with Babik to hear all this out. Zumbar recommended the Board go into Executive Session. Thorley stated that he did not think it was proper to enter into executive session for contracts unless

personnel is being discussed. Creighton recommended Zumbar just have the discussion with Babik afterwards. Thorley stated he meant there's no reason not to have it public. Zumbar stated that he would like to speak with Babik first, and then if necessary, he would follow up with Bob Nau.

Babik stated the numbers were not even necessarily objectionable in the draft that was in front of the Board. It was the method and nature of payments that would be received by their office. He had sent over a redlined draft of that very agreement, but he didn't know if that was the agreement before the Board today. Thorley stated that it is. Babik stated it was the idea that it would be on a per case basis for the entirety of the \$56,000, when coupled with the statement that they would, quote "keep the number of cases down". That gives us a lack of certainty as to what we can expect out of the contract. If it were the case that it just said the number at the time of the agreement, that may be acceptable, to be paid quarterly on a basis of \$750 per case up to 75 cases. That may work, but we just want certainty. That's all we were trying to find here.

Green asked isn't most of the work going away. Babik stated that was not his understanding. Thorley stated actually the average prior and during NIP as it relates to side lots was around 100 cases. This year actually it was 112 cases. But when pressed for a number from Babik, we couldn't go 100 or 112, because the future is unknown. We don't know where the money is coming from or going, so the number had to be conservative of 75 cases.

Yost stated there was a considerable spike during the course of NIP, but he believed it's going to level back down to where it was, but it does appear as though the non-NIP related side lot, targeted acquisitions, etc. work load has increased. But the hard part is the unknown, and the Prosecutor's office has no way to regulate how many cases they get. That comes through RPC based on the number of applications received and approved/qualified to proceed.

Green asked Yost if he was then an advocate for a fixed fee for the year for legal services. Green asked what part of this agreement is the big problem. Is it that the amount to get paid per case is not enough, or is it because it's based on getting paid per case.

Yost stated it's per case and no guarantee of knowing. If there's a breakdown of relations, and RPC decides they're going to hold off giving them any cases because they think the Prosecutor's office has been paid enough; everything could get held from June until next January. From a budgetary standpoint, a number gets plugged into your budget. That is the problem with an *up to* language. *So up to* can be zero and still be *up to*.

Thorley stated that looking at the history of what the Land Bank has done with the Prosecutor's office, it's averaged around 100 cases. When going forward, when being pressed for a number, we can't say it's going to be 100. That we don't know. For budgetary purposes, budget 50 or budget 75. RPC is not holding cases back.

Green asked Zumbar if the Prosecutor does your garden variety tax foreclosures. Zumbar stated that is correct. The Treasurer's office sends up anywhere between 400 to 800 cases a year. Green asked Zumbar how they get billed for that. Zumbar stated when they go through the PJR, they take it through the entire judicial foreclosure procedure. Costs are determined, and when it goes to Sheriff's tax foreclosure sale, the court decree actually identifies all the costs involved, and checks are then received if it's sold; remember it has to be sold in order for us get paid. Meanwhile all these costs are being expended by each department; the Treasurer's office, the Clerk of Court's office, the Prosecutor's

office. At the decree of sale, the judge actually has all these costs billed into the decree, and if it's sells at the Sheriff's tax foreclosure sale, those costs then are paid to us in two separate checks to the Treasurer's office. One is to cover the cost involved with the Clerk of Courts and the other is to cover the cost involved with the Prosecuting attorney and the Treasurer's office.

Yost stated the out-of-pocket is where the DTAC money comes back to help fund further tax collections. Green asked if the court determines the Prosecutor's fee for professional counsel. Yost stated no, that's where the DTAC fund percentage of the sale comes back to the Treasurer and Prosecutor. Green asked if they get paid per year no matter what the work load is; is that a fixed fee per case or is that a fixed fee per month. Yost stated it is a percentage of the taxes collected. That is what the Treasurer and Prosecutor get. Green stated so the Treasurer gets 2.5% and the Prosecutor gets 2.5%. The Prosecutor is paid separately and receives their own DTAC, and it's presumed to pay for their legal services. Yost stated yes.

Thorley stated not to lose sight of the fact that each one of these BOR cases that is filed, the Land Bank is paying the cost associated with that, which averages around \$850-950 per case. Green asked if that's for the PJR and courts costs. Zumbar stated yes, and publications. The Land Bank is eating about \$700 or more of those costs.

Zumbar stated that he wanted to meet with Babik, and then he will follow up with Bob Nau. He knew that when several individuals had a meeting to discuss this, we all understood the direction of the Land Bank's desire in terms of identifying a number per case. That is what ultimately we tried to build a budget around. The Prosecutor has brought up that there are additional services they feel they should be compensated for, and he can attest to that. Zumbar stated that he has called up Yost many times, and all the problems that are associated with a BOR case.

Zumbar stated the big dilemma in the room, which has not been talked about, is the case before the Supreme Court in the State of Ohio which had hearings last week on whether or not the BOR is going to be the appropriate body to even entertain hearing these cases. Zumbar asked Thorley to do a quick brief on this case as he was present at the hearing.

Thorley who had attended the hearing gave a brief update. There were a couple different issues that were raised. One was the separation of powers that this should be held solely within the judiciary and was not subject to BOR because of the different hats that they wear. That didn't go very far because one of the Justices at the beginning indicated that back when the constitution was formed in 1851, the Treasurer would go out and would automatically seize properties. That put the legal counsel on his heels, and he never recovered from that. The second issue that they raised was jurisdictional, and Chief Justice O'Conner asked if it's delinquent in taxes. Yes. Is it a blighted property? Yes. That pretty much ended that because jurisdiction centers on the actual delinquency of the taxes. The third issue was that they poked at the Treasurer because the Treasurer's main duty is the collection of taxes. He's also in most cases the Chairman of the Land Bank, so how to reconcile that. And they pretty much nailed him with the fact that the Auditor, and there's been numerous cases on the Auditor, they appraise property and then sit on the BOR and hear objections to how the property was appraised. So while it went much deeper, that was the three notes that came out of it. What was really interesting is that Steve Funk was the Counsel for them. He actually came to the Land Bank board meeting afterwards and did a debriefing on the case. The \$5,000 worth of dues, while they didn't pay for legal counsel because that was picked up by Cuyahoga County, there are two other federal cases going on, one in the southern district and one in the northern district, and they are alleging takings. He didn't believe it

would go very far, because there is case law that says the collection of taxes is not a taking. And that is what this is based on. It looks like part of the dues money will go to pay legal counsel on these cases. This case had a fair market value of \$140,000 and was basically delinquent of taxes of \$40,000. The land owner appeared at all stages of the process, never once made mention to have it removed to judicial court, and never once exercised his rights to have a de-novo hearing. That was probably a fourth issue that came out within the whole thing was that he did have the availability of actually getting into court, and he needed to do something, but in fact did not do that. Zumbar stated so we are waiting upon the Supreme Court to issue a ruling on the matter, and it could be between 6-9 months before they rule.

10. Next Meeting – December 16th 9:00 a.m.

The meeting was adjourned at 9:51 a.m.